LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 25 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 509

RICHARD LAWRENCE AND JAMES ORANGE,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

JOHN M. BOWLUS,
SHELI Z. ROSENBERG,
RUSSELL WOODY,
105 West Adams,
Chicago, Illinois,
Attorneys for Appellants.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

	PAGE
Table of Authorities	i
Opinion Below	1
Jurisdiction	1
Statute Involved	2
Questions Presented	3
Statement of the Case	4
The Federal Questions Are Substantial	8
I. Former Section 33, Chapter 11, of the Municipal Code of Chicago, Is Unconstitutionally Vague and Overbroad, and Is Void on Its Face	8
II. The Decision of the United States District Court Is Binding on the Supreme Court of Illinois	12
III. Due Process Requires That the Defendants in a Municipal Ordinance Prosecution Be Able to Ascertain the Procedural Rules by Which the Case Will Be Governed	15
Conclusion	18
Appendix	A1

Table of Authorities.

Cases.

Aptheker v. Secretary of State, 378 U. S. 500 (1964)	8, 11
Ashton v. Kentucky, 384 U. S. 195 (1966)	8
Baggett v. Bullitt, 377 U. S. 360 (1964)	8
Campbell v. California, 200 U. S. 87 (1906)	2
City of Chicago v. Carney, 34 Ill. App. 2d 303 (1962)	16
City of Chicago v. Joyce, 38 Ill. 2d 368 (1967)	16

City of Chicago v. Lewis, 28 Ill. App. 2d 189 (1960).. 16
City of Chicago v. Williams, 45 Ill. App. 2d 327 (1st Dist. 1963) 16
City of Elmhurst v. Buettgen, 394 Ill. 248..... 11
Cooper v. Aaron, 358 U. S. 1 (1958)..... 14
Cox v. Louisiana, 379 U. S. 559 (1965)..... 11
Cramp v. Board of Public Instruction, 368 U. S. 278 (1961) 8
Dombrowski v. Pfister, 380 U. S. 479 (1965) .8, 11, 12, 13, 14
Edwards v. South Carolina, 372 U. S. 229 (1963)..... 8
England v. Louisiana Medical Examiners, 373 U. S. 411 (1963) 14
Hamm v. City of Rock Hill, 379 U. S. 306 (1964)..... 14
Herndon v. Lowry, 301 U. S. 242 (1937)..... 8
King Manufacturing Co. v. Augusta, 277 U. S. 100 (1928) 2
Landry v. Daley, Case No. 16886 (7th Cir. 1969)..... 9
Landry v. Daley, 280 F. Supp. 933 (N. D. Ill. 1968)... 10
Landry v. Daley, 280 F. Supp. 968 (N. D. Ill. 1968) .7, 9, 12
Lanzetta v. New Jersey, 306 U. S. 451 (1939)..... 8
Liberty National Bank of Chicago v. Collins, 388 Ill. 549 11
Martin v. City of Struthers, 319 U. S. 141 (1943).... 9
Mayor and Aldermen of the City of Nashville v. Cooper, 73 U. S. 247 (1868)..... 14
McNeese v. Board of Education, 373 U. S. 668 (1963) .12-13
N. A. A. C. P. v. Button, 371 U. S. 415 (1963).....8, 11, 13
People v. Stout, 41 Ill. 2d 292..... 16
Reinman v. Little Rock, 237 U. S. 181 (1915)..... 2

Shaughnessy v. United States, 345 U. S. 206 (1952)... 18
Shuttlesworth v. City of Birmingham, 382 U. S. 87 (1965) 8, 11
Smith v. California, 361 U. S. 147 (1959)..... 8
State v. Coleman, 46 N. J. 16, 214 A. 2d 393 (1965), cert. den., 383 U. S. 950 (1966)..... 15
Stromberg v. California, 283 U. S. 359 (1931)..... 8
Thornhill v. Alabama, 310 U. S. 88 (1940)..... 8, 11
United States v. Raines, 362 U. S. 17..... 11
United States v. Robel, 389 U. S. 258 (1967)..... 8
Village of Maywood v. Houston, 10 Ill. 2d 117..... 16
Village of Park Forest v. Bragg, 38 Ill. 2d 225 (1967).. 17
Winters v. New York, 333 U. S. 507 (1948)..... 8
Zwickler v. Koota, 389 U. S. 241 (1967)..... 12

Statutes and Ordinances.

28 U. S. C. § 1257(2)..... 2
42 U. S. C. § 2000 et seq..... 14
Section 33, Chapter 11, Municipal Code of the City of Chicago, Illinois (Repealed March 26, 1969)..... 1, 2, 3, 9
Section 33, Chapter 11, Municipal Code of the City of Chicago, Illinois..... 2-3

Court Rules.

Rules of the Circuit Court of Cook County, Illinois, Part O, Rule 0.4 (Illinois Courts Rule Book, Law Bulletin Publishing Co., July 25, 1967)..... 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. .....

RICHARD LAWRENCE AND JAMES ORANGE,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

OPINION BELOW.

The opinion below has not yet been officially or unofficially reported but a copy of the opinion is set forth in Appendix A.

JURISDICTION.

The nature of this proceeding, as characterized by the Illinois Supreme Court, is quasi-criminal. It was brought by the City of Chicago against the Appellants, Richard Lawrence and James Orange, under Section 33, Chapter 11 [interfering with the duties of a police officer] of the Municipal Code of the City of Chicago.

The judgment of the Illinois Supreme Court was filed

on May 28, 1969. The Notice of Appeal was filed in the Illinois Supreme Court on July 14, 1969.

Jurisdiction of this Court to review on direct appeal the judgment of the Illinois Supreme Court upholding the constitutionality of the ordinance is conferred by 28 U. S. C. Section 1257(2).

Jurisdiction of this Court is sustained by the following cases:

> *Reinman* v. *Little Rock*, 237 U. S. 181 (1915);
> *King Manufacturing Co.* v. *Augusta*, 277 U. S. 100 (1928).

STATUTE INVOLVED.

This case involves a challenge to the constitutionality of former Section 33, Chapter 11 of the Municipal Code of the City of Chicago which provides:

> Any person who shall resist any officer of the police department in the discharge of his duties, or shall in any way interfere with or hinder or prevent him from discharging his duty as such officer, or shall offer or endeavor to do so, and whoever shall in any manner assist any person in the custody of any member of the police force to escape or attempt to escape from such custody, or attempt to rescue any person in custody, shall be fined not less than ten dollars nor more than one hundred dollars for each offense. [Chapter 11, Section 33, Municipal Code of Chicago. Repealed March 26, 1969.][1]

1. The repeal of the ordinance does not render this case moot. The repeal does not remove from the Appellants the burden of paying a fine under the old ordinance or the burden of having convictions on their records (*Campbell* v. *California*, 200 U. S. 87 (1906)). The text of the amended Chapter 11, Section 33 is as

QUESTIONS PRESENTED.

1. Is Section 33, Chapter 11 of the Municipal Code of the City of Chicago void on its face for vagueness and overbreadth contrary to the first and fourteenth amendments to the United States Constitution?

2. Is a decision of a United States District Court, rendered in a case unrelated to the one giving rise to this appeal, declaring an ordinance of the City of Chicago unconstitutional and void, binding upon the Supreme Court of Illinois in the appeal from the conviction of Appellants for violating that ordinance?

3. Does the Due Process Clause of the fourteenth amendment compel a State, in a municipal ordinance prosecution denominated by the highest court of the State as "quasi-criminal", to provide a clear-cut set of procedural rules by which such a prosecution is to be tried so that a defendant may know before trial whether the case will be governed by civil or criminal rules of procedure?

STATEMENT OF THE CASE.

Appellant Lawrence is an ordained Methodist minister. Appellant Orange is a minister and a field worker for the Southern Christian Leadership Conference.

On Sunday, November 13, 1966, at about 3:00 P.M., both

---

follows:

> 11-33 (a) Any person who knowingly shall resist or obstruct the performance by one known to the person to be a peace officer of any authorized act within his official capacity or shall knowingly interfere or prevent a peace officer from discharging his duty as such officer and whoever shall in any manner knowingly assist any person in the custody of any member of the police department to escape or attempt to escape from such custody, shall be fined not less than $25.00 nor more than $500.00.
>
> (b) For the purposes of this section "resist" shall mean passive as well as active resistance.

Appellarts and a Reverend John Rhodes, a student minister, walked onto the porch of the house of one Burleigh Ginkle. Reverend Lawrence knocked at the door. Ginkle, a patrolman in the Chicago Police Department, had a few days before shot and killed one Richard Hagon. Reverend Rhodes testified that the three ministers had come to pray with Ginkle at his home (R. 274).

When Reverend Lawrence began to knock, the ministers were approached from the street by Raymond O'Malley, a sergeant in the Chicago Police Department and Arthur Mooradian, an assistant corporation counsel for the City of Chicago. Sgt. O'Malley identified himself, said he was there to protect the house, that the occupants did not want to be bothered, and asked Appellants and Reverend Rhodes to leave the area (R. 178). Mooradian testified that Appellants responded that they had come to "save the soul" of Ginkle (R. 179).

Reverend Rhodes and Appellants came down off the porch. O'Malley and Mooradian turned and walked away but again heard "pounding" (R. 179) and saw the ministers back on the porch. O'Malley then told them that they would be placed under arrest if they did not come off the porch (R. 180). There followed a discussion among the ministers on the public sidewalk. Subsequently, Reverend Rhodes walked away and Appellants returned to the porch. O'Malley then placed Appellants under arrest.

On November 14, 1966, Appellants were charged with violating the disorderly conduct ordinance of the City of Chicago (Section 193-1) and Section 33, Chapter 11 (interfering with the duties of a police officer) of the Municipal Code (R. 3). The four cases involving the two charges against each defendant were consolidated for trial and for all other purposes (R. 78).

On January 3, 1967, Appellants filed a Motion to Dismiss

the Complaint (R. 12-14) in which they alleged, among other things, that Chapter 11, Section 33 was so vague as to be repugnant to amendment fourteen of the United States Constitution. The motion was denied on January 31, 1967 (R. 16).

On February 6, 1967, in accordance with the Illinois Rules of Civil Procedure, Appellants filed a Notice to take Sgt. O'Malley's deposition (R. 18). On February 8, 1967, the plaintiff filed a petition to deny discovery (R. 20-21). No discovery was permitted by the trial court.[2]

Prior to the trial, Appellants filed what they called a "Motion for Postponement of Trial or, in the alternative, for Identification of Rule of Law for Immediate Appeal Under Supreme Court Rule 308(a)." (R. 28-30.) The purpose of this motion was to determine what procedural rules would apply to the trial. In support of their motion, Appellants alleged:

---

2. The order of the Circuit Court of Cook County granting plaintiff's petition to deny discovery is missing from the record. For this reason, although it is clearly inferrable upon the record that the petition was granted, the Supreme Court of Illinois refused to pass upon the issue of whether Appellants were entitled to the benefits of discovery, or upon the larger underlying issue of what rules, the Civil or Criminal—or, indeed, *any* rules—govern procedure in an action "civil in form, although quasi-criminal in nature." (App. A5-A6.) Under applicable rules of the Circuit Court, superintendence of the court records are entirely without the control of defendants and there is no requirement that in cases, such as this one, tried in the Municipal Court of Chicago, every order or ruling must be entered in the half-sheet, which is the sole documentary record of such rulings. Rules of the Circuit Court of Cook County, Illinois Part O, Rule 0.4 (*Illinois Courts Rule Book*, Law Bulletin Publishing Co., July 25, 1967), quoted in Appellants' Reply Brief, pp. 6-7), Doc. No. 20. To thus penalize defendants for matters utterly beyond their control in itself raises grave due process questions. In any event, the same issues where raised in Appellants' Motion for Postponement of Trial, or, in the Alternative, for Identification of Rule of Law for Immediate Appeal under Supreme Court Rule 308(a) (R. 28-30). Appellants respectfully submit that the record before this Court amply discloses the elaborate and painstaking efforts on their part to preserve the record.

1. That the trial court had stated that the Rules of Criminal Procedure did not apply.

2. That the trial court had denied the defendants the opportunity to take a deposition under the Civil Practice Act, saying that to allow depositions in these cases would produce "chaos" in the court.

3. That because of these actions by the trial court, defendants could not proceed to trial as they did not know what rules of procedure governed the case and, therefore, a trial would violate the due process and equal protection clauses of the fourteenth amendment.

This motion was denied (R. 22).

The cases were tried before a jury. On February 20, 1967, both Appellants were found not guilty of violating the disorderly conduct ordinance. The jury was unable to agree on a verdict with respect to the interference charges and the trial court declared a mistrial (R. 26).

A new jury was impaneled on October 10, 1967 (R. 106). Appellants moved for a directed verdict at the end of plaintiff's evidence (R. 39) and at the end of all the evidence (R. 57). The motions alleged that Appellants' acts were protected by the first and fourteenth amendments and that the application of Chapter 11, Section 33 to these acts violated those amendments (R. 57-58). These motions were denied and judgment was entered against each Appellant on October 16, 1967 for violating Section 33, Chapter 11 and each was fined $100.00 (R. 52-53).

On November 15, 1967, Appellants filed a Motion for a Judgment Notwithstanding the Verdict of the Jury or, in the alternative, for a New Trial (R. 62-63). Appellants asserted in this motion that the trial court erred in:

1. Not dismissing the complaints;

2. Denying discovery;

3. In denying Appellants' Motion for Identification of a Rule of Law; and
4. In denying Appellants' Motions for a Directed Verdict.

This motion raised again all the constitutional issues raised by previous motions. The motion was denied (R. 66).

Appellants appealed directly to the Illinois Supreme Court on the grounds that Chapter 11, Section 33 was unconstitutional and that the trial court had erred in denying discovery.

While the appeal was pending, the Federal District court for the Northern District of Illinois ruled in *Landry* v. *Daley*, 280 F. Supp. 968 (1968) that Chapter 11, Section 33 was unconstitutional and void on its face.

Appellants strongly urged the Illinois Supreme Court to adopt *Landry* (Defendants' Brief pp. 18-30). However, the Court, in an opinion omitting any reference to *Landry* ruled that the ordinance was not unconstitutionally vague, that the Appellants lacked standing to challenge it, and upheld the conviction.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

I.

Former Section 33, Chapter 11 of the Municipal Code of Chicago, Is Unconstitutionally Vague and Overbroad and Is Void on Its Face.

Due process requires that penal enactments be sufficiently certain in their provisions to impart fair notice of the conduct prohibited and to provide adequate standards for adjudication of guilt, and that they be sufficiently narrow to insure that conduct protected by the Constitution is not swept within their prohibition. See *Ashton* v. *Kentucky*, 384 U. S. 195 (1966); *Shuttlesworth* v. *City of Birmingham*, 382 U. S. 87 (1965); *Baggett* v. *Bullitt*, 377 U. S. 360 (1964); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *N. A. A. C. P.* v. *Button*, 371 U. S. 415 (1963); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278 (1961); *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939). An even higher degree of precision and narrowness of regulation is required where the activity jeopardized is protected by the first amendment, for "[i]t has become axiomatic that '[p]recision of regulation must be the touchstone of regulation in an area so closely touching our most precious freedoms'." *United States* v. *Robel*, 389 U. S. 258, 265 (1967); *N. A. A. C. P.* v. *Button*, *supra* at 438. This Court has stated unequivocally that "standards of permissible statutory vagueness are strict in the area of free expression." *Id.* at 432. See, *Dombrowski* v. *Pfister*, 380 U. S. 479, 486, 489 (1965); *Aptheker* v. *Secretary of State*, 378 U. S. 500, 412-13 (1964); *Smith* v. *California*, 361 U. S. 147, 151 (1959); *Winters* v. *New York*, 333 U. S. 507, 509-10, 517-18, 519-20 (1948); *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98 (1940); *Herndon* v. *Lowry*, 301 U. S. 242, 261-62 (1937); *Stromberg* v. *California*, 283 U. S. 359 (1931).

The resisting and interfering ordinance here challenged

is plainly violative of the principles announced in the decisions of this Court. Indeed, this very ordinance had, prior to the decision of the Illinois Supreme Court, been tested by those principles by the United States District Court for the Northern District of Illinois, and had been found to be grievously deficient. In its decision rendered March 4, 1968, while this cause was on appeal in the Illinois Supreme Court, the District Court, in the case of *Landry* v. *Daley*, 280 F. Supp. 968, held that Section 11-33 is unconstitutional and void.[3]

The District Court, in a thoughtful opinion, held that the ordinance is constitutionally deficient on three fundamental grounds. 280 F. Supp. at 973. First, the ordinance fails to comport with the requirements of due process in that it proscribes not only knowing and intentional interference, but makes it a violation to interfere inadvertently with a peace officer not known to be such. Second, the court pointed out that the phrases "in the discharge of his duties" or "from discharging his duty as such officer," used in the ordinance, are vague and indefinite and would cover unauthorized or excessive action by a peace officer.[4] Finally, the court pointed to the state

3. The Court of Appeals for the Seventh Circuit dismissed the appeal in this case on April 23, 1969. *Landry* v. *Daley*, Case No. 16886 (7th Cir.).

4. The validity of this proposition is dramatically underscored by the confusion which has prevailed in this case respecting the "duty" with which appellants allegedly interfered. The Supreme Court at one point (App. A4), in a misstatement of the record, states that it was the duty of the police officers to "maintain order at the scene of the demonstration"; at another point (App. A1), it states that it was the officer's duty to protect Officer Ginkle and his family from "undue harassment by these people." And see Sergeant O'Malley's testimony as to his uncertainty as to what duties were interfered with by Appellants (R. 137-38, 231-42, 246-48, 251-52). Whatever "undue harassment" means, the officer could not constitutionally prevent appellants from knocking on Officer Ginkle's door for the purpose of speaking to him and "saving his soul," *cf. Martin* v. *City of Struthers*, 319 U. S. 141 (1943), and, therefore, this could not constitutionally have been

resisting statute which, in an earlier opinion in the same case,[5] it had upheld and which employs the terms "resist" and "obstruct." Those terms, the court stated, are relatively precise, connoting some affirmative physical action. The ordinance, in contrast, speaks in terms which are vague and indefinite and which "could cover innocent interference by inaction or speech." 280 F. Supp. at 973.[6] The Supreme Court of Illinois in its discussion of the ordinance announced that "no rule of construction requires the ordinance before us to be given an absurd effect which, although within its letter, is contrary to its spirit." (App. A3). Evidently not content with laying down a rule which tests a penal ordinance by its "spirit," the court next announces, that even if a construction could be given which would render the ordinance void, Appellants are in no position to raise the question:

---

any part of his "duties," even assuming that term is susceptible of some definition.

The Court further mis-states the record when it refers to a "demonstration" and to "demonstrators" (App. A4, A6). There was, in fact, *no* demonstration; a demonstration *had been planned*, but *was called off* early in the afternoon of November 13, 1966, and only Appellants and Reverend Rhodes appeared at Officer Ginkle's house, although the police had expected a large crowd (R. 174-75, 184, 191, 193-95, 198, 207-09).

5. *Landry* v. *Daley*, 280 F. Supp. 933 (1968).

6. Another aspect of the ambiguity of "interfere" as it is used in the ordinance is demonstrated by the facts in this case. O'Malley testified that it was his duty to protect the house of Officer Ginkle and that by arresting Appellants he discharged that duty (R. 232, 239-41). There was no evidence that Appellants resisted arrest or interfered with the officer's efforts to prevent third persons from damaging the house. Thus, it is evident that the logic of the resisting and interfering ordinance is that it is the officer's duty to enforce the law and that one who engages in prohibited conduct not only violates the regulation proscribing the conduct, but also interferes with the officer's discharge of his duty of enforcing that regulation as well. *Every* violation of an ordinance is therefore logically an *automatic* violation of the resisting and interfering ordinance also.

> "It is an established rule that courts will not entertain objections to an allegedly unconstitutional feature where the objecting party is not in any way aggrieved thereby. One who would attack an ordinance or statute as unconstitutional must bring himself within the class as to whom the law is unconstitutional. (*City of Elmhurst* v. *Buettgen*, 394 Ill. 248; *Liberty National Bank of Chicago* v. *Collins*, 388 Ill. 549, 559.) (App. A3-A4.)[7]

The "established rule" as stated by Mr. Justice Klingbiel for the Illinois Supreme Court, overlooks the decisions of this Court for the last thirty years. As the Court said in *Dombrowski* v. *Pfister*, 380 U. S. 479, 486-87 (1965):

> [W]e have consistently allowed attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct would not be regulated by a statute drawn with the requisite narrow specificity. *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98, 81 L. ed. 1093, 1099, 1100, 60 S. Ct. 736; *NAACP* v. *Button*, *supra*, 371 U. S. at 432-433, 9 L. ed. 2d at 417, 418; *cf. Aptheker* v. *Secretary of State*, 378 U. S. 500, 515-517, 9 L. ed. 2d 992, 1002, 1003, 84 S. Ct. 1659; *United States* v. *Raines*, 362 U. S. 17, 21-22, 4 L. ed. 2d 524, 529, 80 S. Ct. 519. We have fashioned this exception to the usual rules governing standing, see *United States* v. *Raines*, *supra*, because of the ". . . danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application." *NAACP* v. *Button*, *supra*, 371 U. S. at 433, 9 L. ed. 2d at 418.

These cases also make clear that where, because of vagueness, overbreadth, or ambiguity, a regulation is capable of

7. It is remarkable that the Illinois Supreme Court, in its opinion, *does not cite a single decision* of this Court in support of these or any other propositions. This holding is squarely at odds with the consistent line of decision in this Court.

an improper application which would abridge speech, it will not be saved by the possibility of a narrower construction based on its "spirit." For the mere possibility of a sanction has a "chilling effect" on the exercise of first amendment rights. That effect must be infinitely greater where, as here, Appellants have been arrested, forced to endure two jury trials, been fined, and have been forced to prosecute an appeal to the highest court of the state.

Appellants respectfully urge this Court to adopt the view of the District Court and hold the ordinance unconstitutional. As Mr. Justice Black pointed out in *Cox* v. *Louisiana*, 379 U. S. 559 (1965), and this court reaffirmed in *Shuttlesworth* v. *Birmingham*, 382 U. S. 87 (1965):

> Such a statute does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat (379 U. S. at 501).

II.

The Decision of the United States District Court Is Binding on the Supreme Court of Illinois.

This case squarely raises the issue whether a state court may uphold and enforce an ordinance already declared unconstitutional and void on federal grounds by a federal court.

The District Court, in holding Section 11-33 unconstitutional in *Landry*, based its jurisdiction upon a line of decisions of this Court which hold that the doctrine of abstention, which requires federal courts to defer adjudication of challenges to state statutes until they have been authoritatively construed by state courts, is inappropriate where regulations are justifiably attacked as void on their face. *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965); *Zwickler* v. *Koota*, 389 U. S. 241 (1967); *McNeese* v. *Board of*

Education, 373 U. S. 668 (1963). The rationale of those cases is that where a statute abridges important constitutional rights, those affected by it "are entitled to be free of the burden of defending prosecutions, however expeditious, aimed at hammering out the structure of the statute piecemeal, with no likelihood of obviating similar uncertainty for others." *Dombrowski* v. *Pfister*, *supra*, at 491. A plaintiff attacking a statute or ordinance for vagueness is entitled to have these federal rights adjudicated in a federal court.

The purpose of this exception to the abstention doctrine would be inadequately served indeed if, after the federal court has adjudicated federal constitutional rights, and has declared a state enactment void on its face, the state was free, by adopting a contrary view of the constitutionality of its statute, to continue to prosecute persons under it.

The chilling effect of such prosecutions upon first amendment rights is not to any significant degree lessened by the hope of eventual vindication in the federal courts. Nor can it be the case that only persons who are parties plaintiff in the federal court action or represented by such plaintiffs, are entitled to claim the benefits of the holding of unconstitutionality. The federal court has held the regulation is void on its face on the basis of infirmities which necessarily operate identically on all persons subject to its proscription. To require every potential defendant to seek an injunction from the federal court before claiming immunity from prosecution under a statute already found by that court to be void would impose a burden upon the exercise of first amendment freedoms wholly at odds with the purpose, reflected in *Dombrowski*, of providing those freedoms the "breathing space" which they require to survive. *Cf. NAACP* v. *Button*, 371 U. S. 415, 433 (1963).

This Court spoke in unequivocal terms regarding the primacy of the federal courts in construing the Constitution when, in *Cooper* v. *Aaron*, 358 U. S. 1, 18 (1958) the Court referred to "*the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution*, [which] has . . . been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system." (emphasis added). And see, *England* v. *Louisiana Medical Examiners*, 373 U. S. 411, 415-16 (1963).

These cases strongly suggest, and Appellants strenuously urge, that the effect of the decision of a federal District Court, acting in accordance with the mandate of *Dombrowski* must be the same as the federal statute involved in the analogous case of *Hamm* v. *City of Rock Hill*, 379 U. S. 306 (1964). In that case, the defendants had been convicted in the state courts of South Carolina and Arkansas for violating state anti-trespass statutes by participating in lunch counter sit-in demonstrations. These convictions occurred before the enactment of the Civil Rights Act of 1964, 42 U. S. C. § 2000, *et seq.*, which forbids discrimination in places of public accommodations and removes peaceful attempts to be served on an equal basis from the category of punishable activities. The Court held that the Supremacy Clause and the enactment of the Civil Rights Act of 1964 subsequent to their convictions required an abatement of the state trespass prosecutions.

As this Court recognized over a century ago:

> The decision of the Courts of the United States within their sphere of action, are as conclusive as the laws of congress made in pursuance of the Constitution. *Mayor and Aldermen of the City of Nashville* v. *Cooper*, 73 U. S. 247, 258 (1868).

It is indeed extraordinary that the Supreme Court of Illinois *wholly ignored* the question of the applicability of

the District Court's decision in *Landry* to the case at bar. Eleven pages of Appellants' principal brief (Doc. No. 8) filed with the court below, and counsel's oral argument, pointedly and vigorously contended that the Supreme Court of Illinois was bound to follow the decision of the District Court. The case raises critical questions at the confluence of state and federal powers under the Constitution and one might reasonably expect the Supreme Court of Illinois to give it nodding recognition in the course of its opinion. But—not a word! Other state courts have not felt that the issue could be treated in such cavalier fashion. See, *State* v. *Coleman*, 46 N. J. 16, 214 A. 2d 393 (1965), *cert. den.*, 383 U. S. 950 (1966).

III.

Due Process Requires That the Defendants in a Municipal Ordinance Prosecution Be Able to Ascertain the Procedural Rules by Which the Case Will Be Governed.

It is critical in any court proceeding that the litigants know by what set of procedural rules the dispute will be governed. Defendants in municipal ordinance prosecutions in Illinois are denied this. Furthermore, although the Appellants in this case were convicted by the civil procedure test of a clear preponderance of evidence, they were denied the civil procedure right to discovery.

Stated very simply, Appellants respectfully urge this court to instruct the Supreme Court of Illinois to clarify the rules of procedure in ordinance prosecutions and to reverse their convictions because those rules are so unclear as to violate due process. Appellants squarely posed this problem to the Supreme Court of Illinois (Defendants' Brief pp. 34-39) and it responded:

> Defendants now seek to have this court determine generally whether "municipal ordinance prosecutions"

> are governed by the Civil Practice Act and by the rules of this court applicable to civil proceedings. We have recently pointed out that a prosecution to recover a penalty for violation of a municipal ordinance is not a criminal proceeding. (*People* v. *Stout*, 41 Ill. 2d 292.) It is civil in form, although quasi-criminal in character, and ordinarily is termed a civil action rather than a criminal prosecution. (*Village of Maywood* v. *Houston*, 10 Ill. 2d 117, 119.) As we observed in the *Houston* case, however, "problems in this area cannot be solved by a mere labeling process." (App. A. 5.)

Appellants find this response even more confusing than the procedural rules under which they were convicted.

In *City of Chicago* v. *Joyce*, 38 Ill. 2d 368, 373 (1967), the court held that the burden of proof in municipal ordinance prosecutions was a clear preponderance of the evidence and not proof beyond a reasonable doubt under Section 3-1 of the Criminal Code of 1961, Ill. Rev. Stat. 1965, chap. 38, para. 3-1 and section 102-15 of the Code of Criminal Procedure of 1963, Ill. Rev. Stat. 1965, chap. 38, para. 102-15. Although the court did not expressly hold that none of the provisions of the Code of Criminal Procedure applied to municipal ordinance prosecutions, it would appear to be a reasonable inference to be drawn from that opinion. *City of Chicago* v. *Williams*, 45 Ill. App. 2d 327 (First Dist., 1963), reinforces this inference. That case involved a disorderly conduct ordinance prosecution and the Appellate Court held that "[s]ince the proceeding is quasi-criminal, it is to be tried and reviewed as a civil case . . . and the City's burden of proof is to establish violation of the ordinance by a clear preponderance of the evidence." 45 Ill. App. 2d at 327, fn. 2. See also: *City of Chicago* v. *Lewis*, 28 Ill. App. 2d 189 (1960); *City of Chicago* v. *Carney*, 34 Ill. App. 2d 303 (1962).

The above decisions of the Illinois Supreme Court and the Illinois Appellate Court, coupled with the refusal of

the trial court to allow the taking of the discovery deposition of the arresting officer, put the case in a procedural and regulatory limbo at odds with elementary notions of due process. Defendants in municipal ordinance violations have the right to know what the rules will be. There is no sanction in any of the rules of the Illinois Supreme Court, civil or criminal, the Civil Practice Act or the Code of Criminal Procedure, which will allow a trial court in municipal ordinance violation cases to lay down trial practices and procedures on an *ad hoc* basis. Is there something in the "hybrid nature"[8] of municipal ordinance violation cases which permits an eclectic application of pre-trial and trial procedures?

It is anomalous that under the present civil rules of Illinois if a person is sued for $1001.00 he has available to him all of the procedural protections of the Civil Practice Act and the Rules governing civil proceedings of the Illinois Supreme Court, not the least of which are the effective and far-ranging discovery devices available to him, and yet in a "civil" proceeding for an alleged ordinance violation which is started by his arrest, and results in the acquisition of an arrest record and possible confinement if he fails to pay a fine ultimately imposed upon him, none of these safeguards—not to mention the safeguards of the rules of criminal procedure—applies. This is true even though the total fine frequently imposed may exceed $1001.00 as well. No valid meaningful distinction can be drawn between municipal ordinance prosecutions commenced by arrest as opposed to those started by service of summons. Procedural safeguards in the former should be greater, not less, than in the case of the latter In the case at bar the Appellants were not even served with copies of the complaints. Adequate procedural safe-

8. See, e.g. *Village of Park Forest* v. *Bragg*, 38 Ill. 2d 225, 230 (1967).

guards for an accused become particularly important when arrests arise out of the attempted assertion of First Amendment rights.

The importance of procedural fairness and safeguards was stated eloquently by Mr. Justice Jackson, speaking for himself and Mr. Justice Frankfurter in dissent in *Shaughnessy* v. *United States* (345 U. S. 206, 224 (1952)):

> Procedural fairness, if not all that originally was meant by due process of law, is at least what it most uncompromisingly requires. . . . Only the untaught layman or the charlatan lawyer can answer that procedures matter not. Procedural fairness and regularity are of the indispensable essence of liberty.

CONCLUSION.

For the foregoing reasons, Appellants respectfully urge that the federal questions raised by this appeal are substantial and important and that this Court should note probable jurisdiction, hear the case and reverse the decision of the Supreme Court of Illinois.

Respectfully submitted,

JOHN M. BOWLUS,
SHELI Z. ROSENBERG,
RUSSELL WOODY,
Attorneys for Appellants.

COTTON, WATT, JONES, KING & BOWLUS,
105 West Adams Street,
Chicago, Illinois 60603,
FRanklin 2-6275,
Of Counsel.

APPENDIX.

OPINION OF THE SUPREME COURT OF ILLINOIS.

Docket No. 41216—Agenda 28—March, 1969.

THE CITY OF CHICAGO, Appellee, *vs.* RICHARD LAWRENCE *et al.*, Appellants.

MR. JUSTICE KLINGBIEL delivered the opinion of the court:

After trial by jury in the circuit court of Cook County, Richard Lawrence and James Orange were found guilty of interfering with a police officer in the performance of his duties. Each was fined $100. Claiming violations of constitutional rights as well as errors at the trial, they appeal directly to this court.

The record discloses that on November 12, 1966, the Chicago Police Department was notified that a large group intended to stage a "demonstration" outside the home of officer Burleigh Ginkle, a member of the police department. The plan was to congregate at 2:00 P.M. the next day and proceed in automobiles along 63rd Street to a designated parking area from which they would then march to Officer Ginkle's residence. Sergeant O'Malley, a 20-year member of the police department, was given orders to protect Officer Ginkle and his family from undue harassment by these people, and an assistant corporation counsel of the city was assigned to act as a legal advisor to the police. Officer Ginkle had requested that he and his family be given such protection.

On the day of the anticipated demonstration the defendants and a third individual appeared at the officer's home.

They walked up on the porch of the house and began knocking on the door. No one opened it. Sergeant O'Malley and the legal advisor were parked across the street, and when they saw what was going on they walked over and told defendant that they had been assigned to keep demonstrators from disturbing Officer Ginkle and his family, and that defendants were not to pound on the door or ring the bell. The three persons came down the steps and Sergeant O'Malley and his companion began to walk back to the squad car. Before they reached it, however, the defendants and their companion went back up the steps and resumed their pounding on the door. Once again Officer O'Malley went to them. He warned them that if they continued their behavior he would have to place them under arrest. The third intruder went to the corner, where the group was assembled, but the defendants once again began pounding on the door. Sergeant O'Malley thereupon walked back up the steps of the house, escorted defendants away and told them they were under arrest.

The ordinance under which the defendants were charged provides that "Any person who shall resist any officer of the police department in the discharge of his duties, or shall in any way interfere with or hinder or prevent him from discharging his duty as such officer, or shall offer or endeavor to do so, and whoever shall in any manner assist any person in the custody of any member of the police force to escape or attempt to escape from such custody, or attempt to rescue any person in custody, shall be fined not less than ten dollars nor more than one hundred dollars for each offense." It is contended that the provisions are invalid for vagueness and for failing to expressly include scienter as an element of the offense. Defendants object that terms like "interfere with" are not defined, and hypothetical situations are pictured in which they suggest a person could violate the ordinance by engaging in "constitutionally-

protected'' conduct. They urge that the ordinance must fall for not, in terms, requiring that the offense be commuted ''knowingly'' and with knowledge that the officer was engaged in the performance of his duties.

As for the vagueness objection it is true that conduct prohibited by ordinance or statute must be described in terms definite enough to serve as a guide to those to whom it applies. But ''interfere with'' and ''hinder'' are not under all circumstances terms too indefinite to be applied. An ordinance may describe conduct by their use where the meaning is clear enough to people contemplating such behavior, the test being whether they convey sufficient definite warning as to proscribe conduct when measured by common understanding and practices. (*Cf. Jaffe* v. *Cruttenden*, 412 Ill. 606.) We do not think that under a reasonable construction the ordinance in the case at bar can be said to be unconstitutionally vague and indefinite. An ordinance or statute must be read in a sensible way, without giving necessarily general terms like ''interference'' such a literal application as would lead to undue restrictions on speech or some other constitutionally protected conduct. No rule of construction requires the ordinance before us to be given an absurd effect which, although within its letter, is contrary to its spirit.

Nor is it necessary to consider at length the objection that the ordinance does not in terms require the offense to have been committed ''knowingly.'' Even if a construction could be given which would render it void because of such an absence, defendants are in no position to raise the question. It is an established rule that courts will not entertain objections to an allegedly unconstitutional feature where the objecting party is not in any way aggrieved thereby. One who would attack an ordinance or statute as unconstitutional must bring himself within the class as to whom the law is unconstitutional. (*City of Elmhurst* v. *Buettgen*, 394

Ill. 248; *Liberty National Bank of Chicago* v. *Collins*, 388 Ill. 549, 559.) In the case at bar there was nothing inadvertent or unknowing about defendants' interference. It is clear that they acted with full scienter, the officer having in fact advised them of his assignment when he first spoke to them. Nevertheless they disregarded his explanations and went back to their pounding on the door. Their conduct was a plain interference with the officer's efforts to maintain order at the scene of the demonstration. They deliberately ignored his repeated directions, distracting his attention from the crowd on the corner and making it necessary for him to return and physically escort them from the premises. They are not in a position to raise a constitutional question based on lack of scienter.

Defendants argue next that the complaints failed to provide them with adequate notice of the charges against them. There is no merit in the contention. Examination of the complaints discloses the date and place of the offense, the name of the complainant police officer, the charge that they did then and there "interfere with him in the performance of his duties", and the chapter and section of the municipal code which was allegedly violated. This was adequate. Moreover there is no question that the defendants were aware of the facts which prompted their arrest. Indeed there had been a prior trial of these same defendants on the same charges, in which the court had declared a mistrial. And in any event the defendants could have moved for more specific statements of the charges if they felt that the complaints were insufficient in that respect. (See *People* v. *Stout*, 41 Ill.2d 292, 293.) Under circumstances such as these there is no basis for claiming on review that the complaints are not specific enough. *City of Chicago* v. *Joyce*, 38 Ill.2d 368.

Defendants next claim they were denied the right to take a discovery deposition of Sergeant O'Malley. The record

contains a notice for the taking of such a deposition, which defendants say was served on the city, and a petition was filed by the latter to deny discovery by deposition. As the city points out, however, the record contains no ruling or order granting or denying the petition. The only indication that a ruling was made is in certain recitations by defendants to the effect that the petition was allowed. The recitations appear in a motion entitled "DEFENDANTS' MOTION FOR POSTPONEMENT OF TRIAL OR, IN THE ALTERNATIVE, FOR IDENTIFICATION OF RULE OF LAW FOR IMMEDIATE APPEAL UNDER SUPREME COURT RULE 308(a)." Orders appear denying these motions. Defendants now seek to have this court determine generally whether "municipal ordinance prosecutions" are governed by the Civil Practice Act and by the rules of this court applicable to civil proceedings. We have recently pointed out that a prosecution to recover a penalty for violation of a municipal ordinance is not a criminal proceeding (*People* v. *Stout*, 41 Ill.2d 292.) It is civil in form, although quasi-criminal in character, and ordinarily is termed a civil action rather than a criminal prosecution. (*Village of Maywood* v. *Houston*, 10 Ill.2d 117, 119.) As we observed in the *Houston* case, however, "problems in this area cannot be solved by a mere labeling process."

In any event this court cannot decide the abstract question sought to be presented here. We cannot infer what ruling was made, if any, on the city's petition, nor do the grounds appear upon which the court may have acted. Even if it be assumed that discovery depositions may be taken in proceedings of this nature, and that the court granted the city's petition to deny, it can hardly be doubted that grounds might still have existed which would warrant the court's action. In the absence of some showing that appropriate steps were taken to compel the appearance of deponent, and that the court refused discovery on the grounds that such procedure is not available, we must presume in

support of the judgment that some valid ground in fact existed. (*Cf. Mullen* v. *People ex rel. Wyatt*, 138 Ill. 606.) In view of the condition of this record no issue is presented which we can decide.

It is claimed that remarks by the assistant corporation counsel in his closing argument to the jury were irrelevant and prejudicial. The first statement complained of was made in reply to comments in defendants' argument on the absence of Officer Ginkle from the courtroom. The city's counsel merely remarked in explanation that the officer's testimony would have added nothing to the case, since he was inside the house when the acts occurred, that he was on duty at the time of the trial, and that "why should we waste your time and the court's time to bring in testimony that would merely be duplicitous (*sic*) of what has gone on before?" The contention is that by the quoted statement counsel was intimating that had Officer Ginkle been called as a witness he would have supported the city's case, and that there is nothing in the record to indicate how he would have testified. The comment was not prejudicial. It was perfectly proper as a response to defense counsel's queries in his argument as to why the officer was not produced at the trial.

The prosecutor also remarked, after referring to members of the police department and their efforts to perform their duties, that "Believe me, it is not an accident that we have not had any riots in this city this summer. We have not had them. We have had them in Newark, in New York * * *." At this point defense counsel objected. The court sustained the objection and directed the jury to disregard the statements. Defendants now insist that they were entitled to have the court grant a mistrial in spite of the ruling on their objection and the direction to disregard. We cannot agree. While the remark may not have been proper, there being no evidence that the demonstrators were ap-

proaching a riot situation, it was not sufficiently prejudicial to call for reversal under the circumstances here. Where it appears that improper remarks do not constitute a material factor in the conviction or that they are of such a minor character that prejudice is not their probable result, the verdict will not be disturbed. (*People* v. *Swets*, 24 Ill.2d 418.) This is the case here.

Our review of this record satisfies us that the evidence amply sustains the verdict and that defendants received an eminently fair trial. The judgments of the circuit court are affirmed.

Judgments affirmed.

SUPREME COURT, U. S.

FILED

SEP 24 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 509

RICHARD LAWRENCE AND JAMES ORANGE,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS,
Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

RAYMOND F. SIMON,
Corporation Counsel of the City of Chicago.
MARVIN E. ASPEN,
JOHN J. GEORGE,
Assistant Corporation Counsel.
Room 511, City Hall,
Chicago, Illinois 60602,
Attorneys for Appellee.

THE DONNELLEY-WARREN PRINTING COMPANY, CHICAGO, ILLINOIS 60

INDEX.

	PAGE
Motion to Dismiss or Affirm	1
Opinion Below	1
Statement of the Case	2, 3, 4
Argument	
I. Section 11-33 of the Municipal Code of Chicago Is a Valid Exercise of the City's Police Powers and Does Not Deny the Appellants Due Process or Interfere With Their Exercise of Free Speech	5, 6, 7, 8, 9
II. The Illinois Supreme Court Is Not Bound By the Opinion of the United States District Court in *Landau* v. *Daley*	9, 10, 11, 12
III. The Trial of the Appellants Complied with the Requirements of Procedural Due Process	12, 13, 14
Conclusion	15

Table of Cases.

City of Chicago v. Joyce, 38 Ill. 2d 368, 373, 232 N. E. 2d 289 (1967)	13
City of Chicago v. Lawrence, 42 Ill. 2d 461, 248 N. E. 2d 74 (Ill. 1969)	1, 4, 5, 8, 13, 14
Cooper v. Aaron, 358 U. S. 1, 18 (1958)	11
Cox v. New Hampshire, 312 U. S. 569 (1941)	6
Dombrowski v. Pfister, 380 U. S. 479 (1965)	9, 10
Hamm v. City of Rock Hill, 379 U. S. 306 (1964)	10, 11
Herndon v. Georgia, 295 U. S. 441 (1935)	12
Kenna v. Calumet H. and S. R. Co., 206 Ill. App. 475 (1917), aff'd., 284 Ill. 301 (1918)	12

Konigsberg v. State Bar, 366 U. S. 36, 50, 51 (1961) .. 6
Landry v. Daley, 280 F. Supp. 968 (N. D. Ill. 1968) 5, 6, 9, 10, 12
Landry v. Daley, 410 F. 2d 551 (7th Cir. 1969) 5, 9
Lewis v. Braun, 356 Ill. 467, 191 N. E. 56 (1934) 12
Martin v. Hunter's Lessee, 1 Wheat. 304, 4 L. Ed. 97 (1816) 12
McNeese v. Board of Education, 373 U. S. 668 (1963) .. 9
People v. Cooks, 58 Cal. Rptr. 550 (1967) 6
Ray Schools-Chicago, Inc. v. Cummins, 12 Ill. 2d 376, 381, 146 N. E. 2d 42 (1957) 12
Schneider v. State, 308 U. S. 147, 161 (1939) 6
Staley v. Illinois Central R. Co., 268 Ill. 356, 109 N. E. 342 (1915) 12
State v. Coleman, 46 N. J. 16, 214 A. 2d 393 (1965), cert. denied, 383 U. S. 950 (1966) 11
United States v. Balint, 258 U. S. 250 (1922) 7
United States v. Chunn, 347 F. 2d 717 (4th Cir. 1965). 8
United States v. Combs, 73 F. Supp. 813 (E. D. Ky. 1947) 8
United States v. Lombardozzi, 335 F. 2d 414 (2d Cir. 1964); Cert. den. 379 U. S. 914 7
Village of Maywood v. Houston, 10 Ill. 2d 117, 138 N. E. 2d 233 (1957) 13
Zwickler v. Koota, 389 U. S. 241 (1967) 9, 10

STATUTES AND ORDINANCES

18 U. S. C. § 111 7
Municipal Code of Chicago, Sec. 11-33 ..... 4, 5, 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 509

RICHARD LAWRENCE AND JAMES ORANGE,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS,
Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

MOTION TO DISMISS OR AFFIRM

Appellee in the above-entitled case moves to dismiss or affirm on the ground that the question presented is so unsubstantial as not to need further argument.

OPINION BELOW

The opinion below is set forth in Appellants' Statement, Appendix, pp. A1-A7. It is reported as *City of Chicago* v. *Richard Lawrence, et al.*, 42 Ill. 2d 461, 248 N. E. 2d 71 (Ill. 1969).

STATEMENT OF THE CASE.

The appellant, James Orange, is a field worker for the Southern Christian Leadership Conference (R. 295, 298) and, although referred to as "Reverend" in the record, is not an ordained minister (R. 298). Richard Lawrence is the pastor of the North Park Methodist Church, President of the Englewood Civic Organization and Chairman of the Englewood Action Committee (R. 330).

On November 12, 1966, the Chicago Police Department was informed by the appellants that a large group of Englewood citizens intended to demonstrate outside the residence of police officer Burleigh Ginkle, a member of the Chicago Police Department (R. 349, 350). The defendant Lawrence, a leader of the group intending to demonstrate, had prepared a written notice which he delivered to the Chicago Police Department telling of the demonstration (R. 349). The Reverend John Rhodes testified on behalf of the defendants that he had called the "watch commander" the night before the planned demonstration and had told him that the group intended to conduct a prayer vigil in front of Officer Ginkle's home (R. 292). The notice prepared by the defendant Lawrence indicated that the demonstrators would form at the Christ Methodist Church at 2:00 P.M. on November 13, 1966 and proceed in automobiles along 63rd Street in Chicago to a designated parking area. The demonstrators would then disembark and march to Officer Ginkle's residence (R. 350).

Sergeant Raymond F. O'Malley, a 20-year veteran of the Chicago Police Department, was ordered by his superiors in the police department to protect Officer Ginkle and his family from undue harassment by the demonstrators (R. 196, 199). Arthur Mooradian, an Assistant Corporation Counsel of the City of Chicago, was assigned

to act as legal advisor to the police during the demonstration (R. 172). It was expected that approximately 100 people would participate in the demonstration in front of Officer Ginkle's home (R. 209). Officer Ginkle had requested that he and his family be protected from harassment (R. 219).

On November 13, 1966, the day of the anticipated demonstration, at about 3:00 P.M., the appellants, James Orange and Richard Lawrence, along with Reverend John Rhodes, arrived at Officer Ginkle's home (R. 299, 300). They walked up the steps of the house and began knocking on the door (R. 300).

Mr. Mooradian and Sergeant O'Malley were parked in a squad car across the street from the house observing what transpired (R. 174, 175). They got out of the squad car and walked over to the appellants (R. 199). Sergeant O'Malley informed the appellants who he was, displayed his identification card, and explained that he was assigned to keep the demonstrators from disturbing Officer Ginkle and his family (R. 199). He told them they could demonstrate on the public way in front of the house but that they were not to go up the steps of the house and they were not to pound on the door or ring the bell (R. 229).

The appellants and the Reverend Rhodes came down the steps of the house and Sergeant O'Malley and Mr. Mooradian began to walk back to the squad car (R. 200). Before they got back, however, Reverend Rhodes, along with the appellants Lawrence and Orange, walked back up the steps and once again began knocking on the door (R. 200). Sergeant O'Malley once again walked back to the appellants and warned them that if they continued this activity he would place them under arrest (R. 201). The Reverend Rhodes went back to his automobile but the appellants again began "pounding" on the door (R. 201). Sergeant

O'Malley walked up the steps of the house, took each man by the arm, and walking them down the steps, told them they were under arrest (R. 201). During all of this time Officer Ginkle was at home (R. 201).

On November 14, 1966, Appellants were charged with violating the disorderly conduct ordinance of the City of Chicago (Section 193-1) and Chapter 11, Section 33 (interfering with the duties of a police officer) of the Municipal Code (R. 3). The four cases involving the two charges against each defendant were consolidated for trial and for all other purposes (R. 78).

The cases were tried before a jury. On February 20, 1967, both appellants were found not guilty of violating the disorderly conduct ordinance. The jury was unable to reach a decision with respect to the interference charge and the trial court declared a mistrial (R. 26).

A new jury was impaneled on October 10, 1967 (R. 106), and entered judgment against each appellant on October 17, 1967, for violating Chapter 11, Section 33 and each was fined $100.00 (R. 52-53).

Appellants filed a Motion for a Judgment Notwithstanding the Verdict of the Jury or, in the alternative, for a New Trial but it was denied (R. 62-66).

Direct appeal was taken to the Illinois Supreme Court on the grounds that Chapter 11, Section 33 of the Municipal Code of Chicago was unconstitutional. The fines levied against the appellants were sustained by the Illinois Supreme Court (Appellants' Statement, Appendix, p. A1-A7). No petition for rehearing was filed in the Illinois Supreme Court.

ARGUMENT.

I.

SECTION 11-33 OF THE MUNICIPAL CODE OF CHICAGO IS A VALID EXERCISE OF THE CITY'S POLICE POWERS AND DOES NOT DENY THE APPELLANTS DUE PROCESS OR INTERFERE WITH THEIR EXERCISE OF FREE SPEECH

Initially it should be noted that Illinois courts, prior to the decision in the instant case, had not construed the City ordinance which prohibits a citizen from interfering with a police officer in the discharge of his duties. The appellants rely on the rationale of the Federal District Court in *Landes* v. *Daley*, 280 F. Supp. 968 (N. D. Ill. 1968). In that case the District Court concluded that Section 11-33 of the Municipal Code of Chicago was invalid because it failed to meet the standards incorporated into a related state statute. The City of Chicago appealed that ruling. However, the appeal was eventually dismissed because of mootness (because the City in the interim had enacted a new ordinance). 410 F. 2d 551 (7th Cir. 1969). Specifically, the appellants point out that the District Court found that the ordinance speaks in terms which are vague and indefinite. The Illinois Supreme Court Opinion in discussing this objection stated (Appellants' Statement, Appendix p. 3):

> "As for the vagueness objection it is true that conduct prohibited by ordinance or statute must be described in terms definite enough to serve as a guide to those to whom it applies. But 'interfere with' and 'hinder' are not under all circumstances terms too indefinite to be applied. An ordinance may describe conduct by their use where the meaning is clear enough to people contemplating such behavior, the test being

> "While the general rule at common law was that the *scienter* was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crimes even where the statutory definition did not in terms include it (*Reg.* v. *Sleep*, 8 Cox C. C. 472), there has been a modification of the view in respect to prosecutions under statutes the purpose of which would be obstructed by such a requirement. It is a question of legislative intent to be construed by the court. It has been objected that punishment of a person for an act in violation of law when ignorant of the facts making it so, is an absence of due process of law. But that objection is considered and overruled in *Shevlin Carpenter Co.* v. *Minnesota*, 218 U. S. 57, 69, 70, 30 S. Ct. 663, 666, 54 L. Ed. 930, in which it was held that in the prohibition or punishment of particular acts, the State may in the maintenance of a public policy provide that he who shall do them shall do them at his peril and will not be heard to plead in defense good faith or ignorance."

Other cases in support of this position include *United States* v. *Ohio*, 34[illegible] F. 2d 547 (4th Cir. 1965) and *United States* v. *Combs*, 73 F. Supp. 813 (E. D. Ky. 1947).

Contrary to the holding of the District Court, it is not established that due process requires "knowledge and intent" as crucial elements of this sort of crime.

The Illinois Supreme Court Opinion discussed the question of whether or not intent is a necessary element of the offense stated. (Appellants' Statement, Appendix, p. 33)

> "In the case at bar there was nothing inadvertent or unknowing about defendants' interference. It is clear that they acted with full scienter, the officer having in fact advised them of his assignment when he first spoke to them. Nevertheless they disregarded his explanations and went back to their pounding on the door. Their conduct was a plain interference with the officer's efforts to maintain order at the scene of the demonstration. They deliberately ignored his repeated

directions, distracting his attention from the crowd on the corner and making it necessary for him to return and physically escort them from the premises. They are not in a position to raise a constitutional question based on lack of scienter."

II

THE ILLINOIS SUPREME COURT IS NOT BOUND BY THE OPINION OF THE UNITED STATES DISTRICT COURT IN LANDRY v. DALEY

On March 4, 1968, the United States District Court for the Northern District of Illinois, Eastern Division, held Section 47-33 of the Municipal Code of Chicago invalid. *Landry v. Daley*, 280 F. Supp. 968 (N.D. Ill. 1968). As noted above, the Court of Appeals for the Seventh Circuit Court dismissed the appeal in this case on April 23, 1969 as being moot. *Landry v. Daley*, 410 F. 2d 851 (7th Cir. 1969).

The appellants' argument is premised on a misinterpretation of *McNeese v. Board of Education*, 373 U. S. 668 (1963), *Dombrowski v. Pfister*, 380 U. S. 479 (1965), and *Zwickler v. Koota*, 389 U. S. 241 (1967). These cases deal with the doctrine of "abstention" and do not support the appellants' argument.

In *McNeese v. Board of Education*, 373 U. S. 668 (1963) this Court held that the plaintiffs, Negro students in the Illinois public school system, did not have to exhaust state administrative remedies before maintaining an action in a federal court under the Civil Rights Act, saying (p. 671):

> "The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."

In *Zwickler v. Koota*, 389 U. S. 241 (1967), this Court considered a declaratory judgment action brought in a federal court challenging the validity of a New York statute

suit cases they must be abated and the judgment in each is, therefore, vacated and the charges are ordered dismissed."

It is plain that this case does not uphold the argument that the Illinois Supreme Court is bound by the decision of the Federal District Court in the *Landry* case. Certainly, the District Court is not imbued with the same powers as Congress.

The additional cases cited by the appellants in support of this contention are completely misconstrued. In *Cooper v. Aaron*, 358 U. S. 1, its effect, this Court concerned itself with the question of whether or not state officials are bound to obey Federal Court orders which were promoted on this Court's interpretation of the United States Constitution in *Brown v. Board of Education*, 347 U. S. 483 (1954). This Court in answering the issue in the affirmative said that state legislatures and officials are bound by the decisions of the United States Supreme Court. That case is clearly distinguishable from the instant case where the issue raised by the appellants is whether a decision of a United States District Court is binding on the highest State court.

In *State v. Coleman*, 16 N. J. 16, 104 A. 2d 495 (1954), cert. denied, 348 U. S. 888 (1954), which is cited by appellants (Appellants' Statement, p. 16), the State court adjudged the law ruling that we are making this Court to accept. In that case the defendants argued that a recent decision handed down by the United States Court of Appeals for the Third Circuit was binding on the State's highest court. The court stated (p. 503):

> "In passing on federal constitutional questions, the state courts and the lower federal courts have the same responsibilities and assume the same position. There is parallelism but not paramountcy for both sets of courts are governed by the same controlling authority of the Supreme Court."

The law is clear that only this Court has appellate jurisdiction over the highest state courts. *Herndon v. Georgia*, 295 U. S. 441 (1935); *Martin v. Hunter's Lessee*, 1 Wheat. 304, 4 L. Ed. 97 (1816). The Illinois Supreme Court has previously ruled that it would not be bound by a federal court's interpretation of a state statute. In the case of *Rau Schools' Chicago, Inc. v. Cummins*, 12 Ill. 2d 376, 381, 146 N. E. 2d 42 (1957), the state supreme court in determining whether or not it would be bound by a federal court's interpretation of the State Compensation law, stated (p. 381):

> "Thus it is held that State courts are free to decide for themselves all questions of the construction of State constitutions and statutes and are not bound by the construction arrived at by a Federal Court . . ."

This same rationale was expressed in *Acierno v. Calumet H. and S. R. Co.*, 206 Ill. App. 17 (1917), *aff'd.*, 281 Ill. 301 (1918); *Stabile v. Illinois Central R. Co.*, 268 Ill. 339, 109 N. E. 342 (1915); *Lewis v. Illinois*, 356 Ill. 467, 191 N. E. 56 (1934).

For the foregoing reasons it is submitted that the decision in *Landers v. Dalsa*, 280 F. Supp. 968 (N. D. Ill. 1968) is not binding on the Illinois Supreme Court.

III

THE TRIAL OF THE APPELLANTS COMPLIED WITH THE REQUIREMENTS OF PROCEDURAL DUE PROCESS.

The appellants argue that they were unable to determine the procedural rules which governed their trial and therefore, they were denied due process (Appellants' Statement, p. 17).

While it is true that the appellants filed a notice to take the deposition of Sergeant O'Malley (C 181) and that the City filed a petition to Deny Discovery by Deposition

(C20), it is equally true that *no order* appears in the record granting the City's petition. Absent such an order the Court did not allow the City's petition and the defendants cannot properly raise the issue.

Further, if the appellants felt themselves placed in a procedural "limbo," it was self-imposed. The City did not argue that the Rules of Civil Procedure were not applicable, but, rather, that there was *no reason* for taking Sergeant O'Malley's deposition (C20). If the trial court allowed the petition it was not because of an ambiguity as to applicable rules. The courts of Illinois have repeatedly held that ordinance violation prosecutions are governed by the Rules of Civil Procedure. *City of Chicago v. Jones*, 38 Ill. 2d 368, 373, 232 N. E. 2d 289 (1967); *Village of Maywood v. Houston*, 16 Ill. 2d 117, 138 N. E. 2d 233 (1959).

The Illinois Supreme Court Opinion (Appellants' Statement, Appendix, pp. A1-A6) discussed this point at length:

> "Defendants next claim they were denied the right to take the discovery deposition of Sergeant O'Malley. The record contains a notice for the taking of such a deposition, which defendants say was served on the city, and a petition was filed by the latter to deny discovery by deposition. As the city points out, however, the record contains no ruling or order granting or denying the petition. The only indication that a ruling was made is in certain recitations by defendants to the effect that the petition was allowed. The recitations appear in a motion entitled 'Defendants' Motion for Postponement of Trial, or in the Alternative for Injunction, or Rule or Law for Immediate Arrest, Under Supreme Court Rule 308(a).' Orders appear denying these motions. Defendants now seek to have this court determine generally whether 'municipal ordinance prosecutions' are governed by the Civil Practice Act and by the rules of this court applicable to civil proceedings. We have recently pointed out that a prosecution to recover a

penalty for violation of a municipal ordinance is not a criminal proceeding (*People* v. *Stout*, 41 Ill. 2d 292). It is civil in form, although quasi-criminal in character, and ordinarily is termed a civil action rather than a criminal prosecution. (*Village of Maywood* v. *Houston*, 10 Ill. 2d 117, 119.) As we observed in the *Houston* case, however, 'problems in this area cannot be solved by a mere labeling process.'

"In any event this court cannot decide the abstract question sought to be presented here. We cannot infer what ruling was made, if any, on the city's petition, nor do the grounds appear upon which the court may have acted. Even if it be assumed that discovery depositions may be taken in proceedings of this nature, and that the court granted the city's petition to deny, it can hardly be doubted that grounds might still have existed which would warrant the court's action. In the absence of some showing that appropriate steps were taken to compel the appearance of deponent, and that the court refused discovery on the grounds that such procedure is not available, we must presume in support of the judgment that some valid ground in fact existed. (Cf. Mullen v. People ex rel. Wyatt, 138 Ill. 606) In view of the condition of this record no issue is presented which we can decide."

Finally, the appellants were not prejudiced even if they were denied the taking of Sergeant O'Malley's deposition. The original trial of the appellants resulted in a mistrial and the Record here indicates that counsel for appellants used the transcript of the first proceeding as a deposition of the second trial. (R219). Certainly, he could not have learned any more had he been permitted to take a deposition in the first place.

CONCLUSION.

For the aforementioned reasons, appellee prays that its motion to dismiss or affirm the above entitled cause on the ground that the question presented is so unsubstantial as not to need further argument be allowed.

Dated at Chicago, Illinois: September 18, 1969.

Respectfully submitted,

RAYMOND F. SIMON,
Corporation Counsel of the City of Chicago.

MARVIN E. ASPEN,
JOHN J. GEORGE,
Assistant Corporation Counsel.
Room 511, City Hall,
Chicago, Illinois 60602,
Attorneys for Appellee.